

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN MOLLNER, as Next Friend of
MILDRED MOLLNER,

Plaintiff, CIVIL CASE NO. 05-40056

v.

WAYNE COUNTY DEPARTMENT OF
PUBLIC HEALTH,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF UNDER FEDERAL RULE
OF CIVIL PROCEDURE 60(B)**

Before the Court is Plaintiff's "Motion for Relief From Order of Summary Judgment Under FRCP 60(b)(1) for Mistake, Inadvertence or Excusable Neglect and to File Amended Complaint Under FRCP 15a," which was filed on October 15, 2005.

Defendant filed a motion for summary judgment on July 28, 2006. A response to the motion was due on approximately August 22, 2005. On September 30, 2005, after a review of the unopposed motion for summary judgment, the Court entered an order granting the motion. In the instant motion before the Court, Plaintiff requests that the Court reconsider its September 30 order granting Defendant's unopposed motion for summary judgment. Plaintiff alleges that because of a glitch in the computer system of Plaintiff's counsel, Plaintiff's intended response was not electronically filed. Plaintiff also alleges that because of the glitch, the entire computer system hardware had to be replaced between September 30, 2005 and October 2, 2005, and that Plaintiff's counsel only became aware of the missing response when the computer was fixed on October 3,

2005.

After a review of the parties' submissions, and having been fully advised in the premises, this Court finds that Plaintiff's delay in filing a response is not sufficiently a mistake, inadvertence, or excusable neglect under Federal Rule of Civil Procedure 60(b). Furthermore, after considering Defendant's arguments set out in its brief in support of the motion for summary judgment and Plaintiff's response, the Court finds Defendant's arguments to be compelling. Finally, the Court finds that amendment of the complaint would be futile. *See Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 519 (6th Cir. 2001).

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's motion for relief from judgment [docket entry 30] is **DENIED**.

SO ORDERED.

Dated: May 22, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on May 23, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Richard J. Gianino; Lloyd G. Johnson; Laurel F. McGiffert; John A. Schapka, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845